IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

WP(C).No. 34712 of 2005(G)

PETITIONER:

PARUKUTTY AMMA,
W/O. LATE P.V. BALAKRISHNAN, KANICHINAL VEEDU,
NADUVATHU CHERRY, CHAVARA SOUTH,
KARUNAGAPPALLY, KOLLAM DISTRICT.

BY ADV. SRI.N.DHARMADAN (SR.),
SRI.M.R.SABU.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY, GENERAL ADMINISTRATION, (FFP B) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **DISTRICT COLLECTOR, KOLLAM, CHAIRMAN OF THE ADVISORY COMMITTEE FOR FREEDOM FIGHTERS, OFFICE OF THE COLLECTORATE, KOLLAM.**

BY GOVERNMENT PLEADER SRI. V.T.K. MOHANAN,
SRI.P.PARAMESWARAN NAIR,ASST SG.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.34712/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER G.O. (P). NO. 328/05/GAD DT. 12/09/2005 BY R.1.

EXT.P.2: COPY OF THE ORDER DT. 21/06/00 ISSUED FROM CJM COURT, KARUNAGAPPALLY.

EXT.P.3: COPY OF THE APPLICATION DT. 11/12/97 FILED BY PETITIONER'S HUSBAND.

EXT.P.4: COPY OF THE CO-PRISONERS CERTIFICATE DT. 11/02/92 BY SRI. GHEEVARGHESE UNNONNI TO PETITIONER'S HUSBAND.

EXT.P.5: COPY OF THE CO-PRISONERS CERTIFICATE DT. 23/05/00 BY UMMINI RAGHAVAN TO PETITIONER'S HUSBAND.

EXT.P.6: COPY OF THE CO-PRISONERS CERTIFICATE DT. NIL. BY P.K. BHASKARAN TO PETITIONER'S HUSBAND.

EXT.P.7: COPY OF THE JUDGMENT IN W.A. 1995/03 DT. 24/05/2005 OF THIS HONOURABLE COURT.

EXT.P.8: COPY OF THE ORDER NO. 53460/FFP-B3/99/GAD DT. 24/06/99 BY R.1.

EXT.P.9: COPY OF THE LETTER NO. A1-3013/99/K. DIS. DT. 25/05/2000 BY RDO TO DIST. COLLECTOR.

EXT.P.10: COPY OF THE LETTER NO. RD4/1321/85/A6 DT. 31/01/1986 BY TAHSILDAR.

EXT.P.11: COPY OF THE REPRESENTATION DT. 24/07/99 BY PETITIONER'S HUSBAND.

EXT.P.12: COPY OF THE JUDGMENT IN O.P. NO. 21180/99 DT. 08/12/99 OF THIS HONOURABLE COURT.

EXT.P.13: COPY OF THE JUDGMENT IN O.P. NO. 9136/99 DT. 30/11/99 OF THIS HONOURABLE COURT.

EXT.P.14: COPY OF THE JUDGMENT IN O.P. NO. 3501/00 DT. 13/11/00 OF THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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W.P.(C).NO.34712 of 2005-G

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Dated this the 23rd day of August, 2007

JUDGMENT

The petitioner is the widow of late Shri P.V. Balakrishnan who was a freedom fighter. The petitioner is aggrieved by the denial of Kerala Freedom Fighters' Pension, as per Ext.P1 order. Earlier, she had approached this court by filing O.P. No. 30604/2000. The same was dismissed and in Writ Appeal NO.1995/2003, this court directed the application to be considered. Ext.P8 order was challenged therein. The petitioner had produced Ext.P2 NARC from the Judicial First Class Magistrate, Karunagappally, and Exts.P3 to P6 certificates by co-prisoners. It is also the case of the petitioner that after accepting similar certificates, the Government had granted pension to another applicant, which is evidenced by Ext.P9 order. Ext.P11 is a further representation submitted by the petitioner requesting for grant of pension. Exts.P13 and P14 are judgments of this court wherein the eligibility of certifiers Shri P.K. Bhaskaran and Ummini Raghavan have been upheld and in Ext.P12 judgment the eligibility of Shri Geevarghese Unnunni was also upheld.

2. The Government has filed a counter affidavit explaining the

circumstances under which the application was rejected. The apparent stand taken is that co-prisoner's certificate issued by Shri Geevarghese Unnunni is not acceptable as the signature of the certifier is in a photostat and the entries are filled in ink. As regards the other co-prisoner's certificate and Personal Knowledge Certificate produced as Exts.P5 and P6, the contention is that the jail records from the certifiers have not been produced by the petitioner.

3. Heard learned Senior Counsel Shri N. Dharmadan for the petitioner and learned Govt. Pleader for respondents. Learned Senior Counsel submits that the approach made by the authorities is too technical, that going by the scheme, in the absence of primary evidence the applicant is entitled to produce the NARC coupled with the certificate from eligible freedom fighters. It is submitted that the certificates issued by the certifiers of the petitioner have been accepted in Exts.P12 to P14 judgments and the period of imprisonment suffered by them have been clearly mentioned in the said judgments. Accepting the same, the petitioners therein had been granted pension also. Therefore, as the details of the certifiers are available with the Government, there is no justification to deny the benefit to the petitioner only for the reason that the petitioner had not produced their jail records. It is also pointed out by the learned counsel for the petitioner

relying upon the decision of the Supreme Court in **Gurdial Singh v. Union of India** (AIR 2001 SC 3883 = (2001) 8 SCC 8) that the standard of proof required is not such standard as in a criminal case and the freedom fighters are entitled for respect and honour. Learned Senior Counsel also submitted that even if Ext.P4 is ignored, then Exts.P5 and P6 certificates are available and therefore the application was entitled to be sanctioned.

4. The petitioner has produced Ext.P2. Going by the same, no records in respect of C.C. No.36/1114 ME are preserved in the court. This amounts to a NARC as per the scheme. In the absence of primary evidence, he is entitled to rely upon the certificates from competent certifiers. Exts.P5 and P6 will show that the certifiers, Shri Ummini Raghavan and Shri P.K. Bhaskaran are recipients of Central Pension. Ext.P5 will show that the certifier had undergone imprisonment for more than five years and 11 months in the freedom struggle and was lodged in the Central Jail, Trivandrum, Kottarakkara and Kollam Kasba Police lockup. Ext.P6 will show that the certifier is a recipient of Central Pension and he suffered actual imprisonment for more than one year in Central Jail and Karunagappally lockup in the freedom struggle and was lodged in Kayamkulam, Kollam and Alappuzha lockups. Therefore, the eligibility of those certifiers cannot be disputed. Apart from that, in Ext.P13 judgment

this court in paragraph 4 has noticed that Shri P.K. Bhaskaran had undergone more than two years imprisonment. Therefore, the said fact cannot be disputed. In Ext.P14, the certificate from Shri Ummini Raghavan was accepted. Learned counsel for the petitioner also relied upon the judgment of a learned Single Judge of this court in Writ Petition No.29988/2003 wherein also the certificates from the certifiers Shri K. Gopinathan and Shri P.K. Bhaskaran, have been accepted in the light of the earlier decisions of this court in O.P.Nos.9136/1999 and 21180/1999. The other reason stated in the counter affidavit is that the certifiers were locked up in the Central Prison, Trivandrum, whereas the petitioner's husband was locked up in Kollam Kasba Police lockup. It is pointed out that therefore there is discrepancy in this aspect also. The certifiers have clearly certified that apart from suffering actual imprisonment in the Central Prison, Trivandrum, they had suffered imprisonment in the jails at Kollam, Alappuzha, Kayamkulam, etc. The said reason is also obviously not correct.

5. For all these reasons, Ext.P1 is quashed as the grounds for rejection are unsupportable. It is declared that the petitioner is eligible for grant of pension under the relevant scheme. Appropriate orders shall be passed granting the same and disbursing the amount, within a period of two

months from the date of production of a copy of this judgment.

The writ petition is disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

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